February 22, 2016

Representative Afendoulis,

Thank you for sharing your sub bill HB5232 (H-1) with us last week. The Michigan Historic Preservation Network still believes that Michigan's Local Historic Districts Act, PA 169 of 1970, works well and allows for adequate public input because the entire process it establishes is a local, political one. We strongly oppose many of the changes proposed in HB 5232 (H-1). We understand, however, from our discussions with you that you would like to see (1) property owner participation and opportunities for public interaction and input increased, (2) protection for property owners so they won't find themselves in an unexpected proposed district when the boundary of the proposed district expanded during the study period, and (3) appeals to a local body.

Attached are our suggestions for language that could achieve all of these goals and still retain a well functioning historic preservation program in our state.

Please let us know of any questions or concerns and we look forward to speaking with you again soon.

Thank you for your consideration.

Sincerely,

Nancy M. Finegood

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Executive Director

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Proposed amendments to HB 5232 (H-1)

Page 3, lines 23-27 and Page 4 lines 1-2: Retain the former definition of a proposed historic district. **Recommendation:** (q) "Proposed historic district" means an area, or group of areas not necessarily having contiguous boundaries, that has delineated boundaries and that is under review by a committee or a standing committee for the purpose of deciding whether it should be established as a historic district or added to an established district. **Rationale:** retaining this language allows for a threatened resource to be protected by the local legislative unit immediately, as is currently the case. There will be proper noticing and ample public participation, and perhaps there could be a petition after the study committee has been appointed, but it is really crucial that the local legislative unit can propose a historic district and, if necessary, act quickly to protect it immediately. HB5232 (H-1) allows for an emergency moratorium or an interim district, but the proposed change in this definition noted here precludes the local legislative unit from actually using these abilities in the case of a sudden proposed development that threatens a community landmark. Local legislative units use these abilities very rarely and they already must have a local historic district ordinance in place to exercise the ability at all. Still, it remains a tool in a community's toolbox to help retain historic buildings, historic character, and the economic benefits those bring.

Page 5, line 3-8: **Remove** "(A) THE LOCAL UNIT SHALL OBTAIN PRELIMINARY APPROVAL OF A PROPOSED HISTORIC DISTRICT FROM AT LEAST 2/3 OF THE PROPERTY OWNERS WITHIN THE PROPOSED HISTORIC DISTRICT, AS LISTED ON THE TAX ROLLS OF THE LOCAL UNIT, PURSUANT TO A WRITTEN PETITION THAT INCLUDES A PRECISE DESCRIPTION OF THE BOUNDARIES OF THE PROPOSED HISTORIC DISTRICT."

**Rationale:** Seeking permission from 2/3 of property owners in a proposed historic district before appointing a committee to study the idea of a local historic district is problematic for many reasons, not the least of which is that having this requirement ties the local government's hands regarding a land use policy. As it is now, local governments can propose a land use policy change, such as a proposed zoning change, and hear from property owners, stakeholders, and the public in meetings and public hearings. Why is historic preservation being singled out and held to a higher bar as compared to other land use policy changes a local government might propose? Additionally, the requirement that 2/3 majority property owner support is demonstrated before a study committee can even be appointed does not allow local governments to act quickly to save an endangered community landmark, even if there is BROAD community support for such an effort. Furthermore, single-resource districts with opposed property owners would become extinct, and this provision gives outsized influence to a property owner who owns several parcels of land in a neighborhood but is not maintaining them, or is demolishing them. In such a case, many neighborhood property owners might seek protection against this person's actions, but no protection could be given. As the City of Grand Rapids stated in their comments, "Deferring entirely to one owner or small number of owners

that have large land holdings rather than resting decision-making with elected officials as representatives of community interests and impacted neighbors disempowers the community good and can adversely affect the property rights and values of non-majority land owners." In all of these cases, the result would be a loss of historic resources that are important to a community's identity, character, economy, and quality of life.

**Substitute:**

(A) THE LOCAL UNIT SHALL APPOINT A HISTORIC DISTRICT STUDY COMMITTEE TO STUDY AN AREA AS DELINEATED BY THE LOCAL UNIT, AND THIS AREA INCLUDES A DESCRIPTION OF THE DEFINED BOUNDARIES OF THE PROPOSED HISTORIC DISTRICT.

(B) UPON APPOINTMENT OF THE HISTORIC DISTRICT STUDY COMMITTEE, NOTICE SHALL BE GIVEN TO THE PROPERTY OWNERS WITHIN THE PROPOSED HISTORIC DISTRICT, AS LISTED ON THE TAX ROLLS OF THE LOCAL UNIT. THE NOTICE SHALL DO ALL OF THE FOLLOWING: DESCRIBE THE NATURE OF THE REQUEST; INDICATE THE PROPERTY THAT IS THE SUBJECT OF THE REQUEST; THE NOTICE SHALL INCLUDE A MAP AND LISTING OF ALL EXISTING STREET ADDRESSES WITHIN THE PROPOSED STUDY AREA BOUNDARIES; STATE WHEN AND WHERE THE REQUEST WILL BE CONSIDERED; INDICATE WHEN AND WHERE WRITTEN COMMENTS WILL BE RECEIVED CONCERNING THE STUDY AREA.

(C) WITHIN 45 DAYS OF APPOINTMENT OF THE HISTORIC DISTRICT STUDY COMMITTEE, THE STUDY COMMITTEE SHALL HOLD A PUBLIC HEARING IN COMPLIANCE WITH THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 to 15.275. PUBLIC NOTICE OF THE TIME, DATE, AND PLACE OF THE HEARING SHALL BE GIVEN IN THE MANNER REQUIRED BY THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275. WRITTEN NOTICE SHALL BE MAILED BY FIRST-CLASS MAIL AT LEAST 14 CALENDAR DAYS BEFORE THE HEARING TO THE OWNERS OF PROPERTIES WITHIN THE PROPOSED HISTORIC DISTRICT, AS LISTED ON THE TAX ROLLS OF THE LOCAL UNIT. Rationale: The required public participation process currently is one public hearing, and we are suggesting one public hearing shortly after the study committee is formed (here), one public education meeting, and another public hearing. These increased public interactions would ensure that property owners have ample opportunity to have questions answered and concerns heard.

Page 5, line 15: **Substitute** upper limit of 7 to 10 or 11. Rationale: If a proposed district is large, a community might want more than 7 volunteers to complete the study and the report. Also, when specifying who should serve on this committee, include language such as "if possible..." because in small communities, it might be difficult to find people willing to volunteer who live in the local unit and who meet all of the criteria.

Page 5, line 16: Is the requirement to have an elected member serve on the study committee a violation of the Incompatible Public Office Act? There is an existing Attorney General opinion that councilmembers cannot also serve on the historic district commission itself.

Page 5, lines 26-27: **Amend** text to say, "CONDUCT A PHOTOGRAPHIC INVENTORY OF RESOURCES WITHIN EACH PROPOSED HISTORIC DISTRICT, USING THE PROCEDURES ESTABLISHED BY THE NATIONAL PARK SERVICE AS A GUIDE. Rationale: having guidelines will make these inventories more useful for planning purposes in the future, especially for regional or transportation planning efforts.

Page 6, line 26-27: **RETAIN** "AND TO THE STATE HISTORIC PRESERVATION REVIEW BOARD" BECAUSE THAT BOARD IS ADVISORY ONLY AND MAY HAVE USEFUL SUGGESTIONS TO THE STUDY COMMITTEE. THE STUDY COMMITTEE CAN REJECT THOSE COMMENTS.

Page 7, after line 2: INSERT LANGUAGE THAT REQUIRES THE STUDY COMMITTEE TO HOLD A PUBLIC EDUCATIONAL MEETING OR WORKSHOP IN A PUBLIC LOCATION, WELL PUBLICIZED OR WITH THE SAME KIND OF NOTICE AND REQUIREMENTS AS A PUBLIC HEARING.

Page 7, lines 25-27: **Remove.**
Page 8, line 1: **Remove.**

**Rationale:** We do not believe that a super-majority of the local legislative body should be required. There would already be (and already is) ample public participation in the process for the local legislative body to gauge public feedback on the issue of a new district. A simple majority is all that is required for other issues that a local legislative body votes on.

Page 9, lines 12-27 and Page 10 lines 1-2 (Appeals):

**MHPN recommends that the current appeals process remain to help ensure consistency from community to community.**

Should local appeals be desired, the following is recommended:

- Allow the legislative body of the local unit to have the authority to delegate review of appeals to an alternate local board or commission.
- Where local review is not feasible due to lack of staff capacity, number of appeals, or other substantive issue that would prohibit timely review or consistent application of standards, then the local unit may refer appeals to the State Historic Preservation Review Board.
- "Any person aggrieved by a decision of the commission relating to a certificate of appropriateness or notice to proceed may, within 15 days of the decision, file a written appeal to the Village/Town/City governing body for review of the decision. **Appellate review shall be based on the same record that was before the commission and using the same criteria.**" *(extracted from multiple states and replicated from Michigan Zoning Enabling Act)*.
- Require defined procedures and standards for appeals in local historic district ordinances.
- Allow a longer period of time for the local legislative body (or specified local board) more time than is currently allotted to prepare. A municipality would not be able to realistically prepare for an appeal within two weeks or so, as the current draft would allow. (Draft's language states that the local legislative unit will hear the appeal at their first regularly scheduled meeting after receiving the appeal. This could actually mean a week or two to

prepare for the appeal, which is unrealistic.) A more reasonable time frame of 60-120 days for the municipality to hear the appeal after receiving it would be more realistic.

**Rationale:** Many city governments have expressed concern to MHPN that hearing the local appeals is a major administrative concern for them because of the funding and resources it could require, and some have expressed that, if appeals are to become local, the appeals responsibility should be able to be delegated to another local board instead of left exclusively with the legislative body. It seems a conflict for the legislative body to also hear appeals. As Grand Rapids stated in their comments to the original HB 5232, "As a general matter, quasi-judicial functions do not normally rest with the legislative body; this is why bodies such as the Board of Zoning Appeals or Housing Appeals Board exist. Such a change would result in the elected body being required to hear all testimony, public input, etc. Given that the role of the legislative body is to make the rules, having it hear an appeal of a ruling seems counter to the desire for an unbiased and transparent process." Additionally, there is nothing in the language of this draft 5232 (H-1) that would ensure that the appeals body would also use the same standards to make its decision as the historic district commission used, and this seems to be the standard practice for appeals in other fields.

Page 10, lines 3-14:

**MHPN recommends that the Secretary of the Interior's Standards for Rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 CFR Part 67 be kept as the standard language.**

The use of these standards helps to insure consistency between communities, and, in the case of tax credit rehab projects, streamlines the review process for the applicant. **Remove** lines 6-8 and lines 12-14 "UNLESS THE COMMISSION FINDS THAT A DIFFERENT STANDARD IS IN THE BEST INTEREST OF THE COMMUNITY" as this can be considered wholly arbitrary.

MHPN recommends inserting the following:

- Recommend that local bodies may create local guidelines/design review standards that follow the guidance of the Secretary of Interior Standards and guidelines to address the unique character of the local district.
- Include in the proposed amendments the following language from the Secretary of the Interior's Standards for Rehabilitation: "The Standards are applied to projects in a reasonable manner, taking into consideration economic and technical feasibility." And "Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials."
- Charge the Review Board, or similar entity, to research and authorize approved alternate building materials in historic districts to provide guidance to local units.
- Recommend that historic district commissions and staff are trained every three years, and this training should include a component on new and alternative materials and technology.

Page 10, lines 23-25. **REMOVE** "AND THE REASONABLENESS OF THE ADDITIONAL COSTS REQUIRED TO COMPLETE A HISTORICALLY ACCURATE REHABILITATION." This phrase assumes that work done in compliance with the Secretary of the Interior's Standards for Rehabilitation will cost more; this is not always the case. The phrase "HISTORICALLY ACCURATE REHABILITATION" is confusing. Most people apply the term "historically accurate" to restorations, but not rehabilitations. Rehabilitation allows for more change than restoration. As a whole, the language quoted above should be removed because it is confusing and conveys a false assumption.

Page 13, line 16-17: **REMOVE** "WITH THE APPROVAL OF THE LEGISLATIVE BODY OF THE LOCAL UNIT."
This is an enforcement mechanism and remedies are sought through the court system before legislative approval is required to repair/demolish.

Page 15, lines 4-5 and lines 27: **Make this language consistent** with the proposed appeals process.

Page 16, beginning at line 2 through Page 18, line 22: It is unclear why boundary modifications or additional districts are being treated differently than first districts. The process as outlined in Section 3 suffices for all district-related actions—new districts (whether they are the first or the 10th in a municipality), boundary modifications, and even dissolution of districts, once the additional criteria for the study report are added—all follow the same process of study committee, research and inventory, public hearings, report, vote of local legislative unit. Establishing all these specific and parallel processes is confusing and cumbersome. **Recommend:** Add language to the effect that, for additional districts, boundary modifications, and eliminating districts, the process as outlined in Section 3 stands, and then it would be recommended to remove all extra language. Noticing property owners and getting the specified people to serve on the study committees could all be handled in Section 3 for a cleaner bill. The study committee report criteria needed for the elimination of a district would still need to be included. All language mentioning preliminary approval by 2/3 of the affected property owners in all cases should be removed. This clause places an unfair burden on communities who want to establish districts; other land use decisions do not require super-majorities from the local legislative unit.

Page 17, lines 18-19: Again, this language should include a clause similar to "if possible" in case a desired property owner as outlined is not available.

Page 18, lines 12-22: **REMOVE** the 120-day waiting period. It unnecessarily complicates the district establishment processes—why is a 10th district in a municipality going to have a different process than a first? If the concern is mainly for boundary modifications here, to ensure enough time for property owners who were not in a district but who would now be under the proposed modified boundaries, to inform and express themselves, then those concerns could be addressed elsewhere in the bill—maybe in Section 3 in an additional section. In any case, a 120-day period after the final report has been submitted (so the public hearings etc have all been completed) for the purposes of property owners informing themselves, formulating an opinion, and expressing that opinion seems an unnecessarily long period of time.

## ADDITIONAL INFORMATION AND RATIONALE

**Public participation and property owner protection:** HB5232 (H-1) proposes a petition showing 2/3 majority of the property owners in a proposed local historic district in support of the district, before a study committee could be appointed. Because local units of government believe that they have the right to initiate land use decisions and cannot ask permission of property owners to make those decisions, we suggest that the 2/3 majority in support language is removed. **Instead, we suggest that the opportunities for public participation are increased and the boundaries of a proposed district are established at the outset of the process, when the study committee is appointed.** We suggest that if the proposed boundaries as expressed at the time of the study committee's appointment expand and the proposed area under study grows, then the process resets and the public notifications and public meetings with proper notification begin again. **This will achieve Rep. Afendoulis's goal of making sure that property owners will not find their property under study when they were not previously notified.** The required public participation process currently is one public hearing, and **we are suggesting one public hearing shortly after the study committee is formed, one public education meeting, and another public hearing. These increased public interactions would ensure that property owners have ample opportunity to have questions answered and concerns heard.** Removing the requirement that 2/3 of property owners be supportive of the district at the outset allays the expressed concerns of local governments and, as importantly, it allows for local governments to respond quickly to protect endangered landmarks.

**Appeals:** We believe that the current appeals process to the State Historic Preservation Review Board works well and we advocate keeping it. Over 90% of applications are approved by local historic district commissions throughout the state, so not many appeals are filed. For those that are filed, the Review Board offers expertise and objectivity because they are not operating in the local, political climate and so can offer an unbiased review. However, if Representative Afendoulis believes that the appeals system is something that must be addressed, then we suggest a system that would allow for local appeals, but that would also allow for appeals to the State Historic Preservation Review Board when necessary. In this system, local legislative units who can't efficiently manage the appeals process on their legislative body could decide to send their appeals to either another local body that exists or that could be formed, or to the State Historic Preservation Review Board. This would allow for increased local control, allowing local governments to decide for their local communities which system works best for them, taking into consideration their human and financial resources.

**Standards:** We are recommending that the Secretary of the Interior's Standards for Rehabilitation be retained. We are suggesting that the language from the Standards about "economic and technical feasibility" and about new materials be inserted directly into the enabling legislation, but retaining these best-practice Standards keeps decision-making defensible and consistent across the state and streamlines the process for property owners seeking the federal rehabilitation tax credits.